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MAYER, BROWN, ROWE & MAW

1909 K STREET, N.W.

WASHINGTON, D.C. 20006-1101

ADAM C. SLOANE
COUNSEL
DIRECT DIAL (202) 263-3269
DIRECT FAX (202) 263-5269
asloane@mayerbrownrowe.com

MAIN TELEPHONE
(202) 263-3000
MAIN FAX
(202) 263-3000

November 18, 2002

VIA FACSIMILE

Kenneth N. Weinstein
Associate Administrator for Safety Assurance
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Room 5321
Washington, D.C. 20590

Re: Docket No. NHTSA-2001-10526, Notice 2: Decision That Nonconforming 1999
Ferrari F355 Passenger Cars Are Eligible for Importation -9

Dear Mr. Weinstein:

Through its undersigned counsel, Ferrari North America, Inc. ("FNA") hereby requests that the above-referenced decision in Docket No. NHTSA-2001-10526 be amended to clarify that registered importers seeking to import nonconforming vehicles under 49 U.S.C. § 30141(a)(1)(A) and 49 U.S.C. § 32506(c) must bring such vehicles into compliance with the bumper standard (see 49 U.S.C. §§ 32502; 49 C.F.R. Part 581). As discussed below, this request has been prompted by a statement in the decision suggesting that compliance with the bumper standard is not required for vehicles imported under Sections 30141(a)(1)(A) and 32506(c). Because compliance with the bumper standard ~~is~~ required for vehicles imported under these statutory provisions, we respectfully request that the agency publish in the Federal Register an amendment of its decision, so that registered importers and the public will not be confused about the requirements for importing nonconforming vehicles under these provisions.

BACKGROUND

J.K. Technologies, LLC ("JKT") filed a petition pursuant to 49 U.S.C. § 30141(a)(1)(A) for a decision that 1999 Ferrari F355 passenger cars are eligible for importation into the United States. FNA filed comments opposing JKT's petition. Among FNA's arguments was one pointing out that the bumpers of non-U.S.-certified F355s differ from the bumpers of U.S.-certified F355s and that any of JKT's modifications to the non-U.S. F355 bumpers must be tested for compliance with the 49 C.F.R. Part 581 bumper standard.

Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles Manchester New York Palo Alto Paris Washington, D.C.
Independent Mexico City Correspondent: Jauregui, Navarrete, Nader y Rojas, S.C.

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On November 1, 2002, the agency issued – and on November 6, 2002, the agency published in the Federal Register – its decision that “1999 Ferrari F355 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to 1999 Ferrari F355s passenger cars originally manufactured for importation into and sale in the United States * * * and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.” 67 Fed. Reg. 67686, 67687-88 (Nov. 6, 2002) (“F355 Decision”).

In the course of the F355 Decision, the agency, in response to FNA’s argument about the Bumper Standard, made the following statement:

The agency notes that Bumper Standard compliance issues are not directly relevant to an import eligibility decision, as that decision is to be based on the capability of a non-U.S. certified vehicle to be readily altered to conform to the FMVSS, and the Bumper Standard in 49 CFR Part 581 is not an FMVSS.

Id. at 67687. Although it is true that the bumper standard is *not* an FMVSS, the statement is potentially misleading because bumper standard compliance issues *are* germane to import eligibility both as a matter of Federal statutory law and this agency’s regulations, as the agency itself has recognized in recent decisions on other petitions to import nonconforming Ferrari cars. *See, e.g.*, 67 Fed. Reg. 17483, 17485 (Apr. 10, 2002) (decision on importation of nonconforming 2001 Ferrari 360s, stating, with respect to bumper standard, that petitioner “recognizes that this is a conformity issue”); 67 Fed. Reg. 17479, 17482 (Apr. 10, 2002) (decision on importation of nonconforming 2001 Ferrari 550s, stating, with respect to bumper standard, that because petitioner asserted that it would replace all non-U.S.-model parts with U.S.-model parts, “the agency has concluded that the non-U.S. certified 2001 Ferrari 550 is capable of being readily modified to conform to the requirements of Part 581”).

DISCUSSION

49 U.S.C. § 32502(a) mandates the promulgation of bumper standard regulations for passenger motor vehicles. 49 U.S.C. § 32506 states that a person may not

manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or *import into the United States*, a passenger motor vehicle * * * manufactured on or after the date an applicable standard under section 32502 of this title takes effect, unless it conforms to the standard.

49 U.S.C. § 32506(a)(1) (emphasis added). The statute goes on to provide that

The Secretaries of Transportation and the Treasury may prescribe joint regulations authorizing a passenger motor vehicle * * * not complying with a standard prescribed under section 32502 of this title to be imported into the United States subject to conditions (including providing a bond) the Secretaries consider appropriate to ensure that the vehicle * * * will

(A) comply, after importation, with the standards prescribed under section 32502 of this title;

(B) be exported; or

(C) be abandoned to the United States Government.

49 U.S.C. § 32506(c)(1). Thus, it is clear that, under the applicable Federal statute, compliance with the bumper standard ~~is~~ relevant to, and required for, the importation eligibility of a vehicle not originally manufactured to conform to that standard. *See also* 55 Fed. Reg. 11375, 11375 (Mar. 28, 1990) (preamble to final rule on “Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards,” stating that “conformity” to bumper and theft standards “is required by statute”).

Furthermore, this agency’s regulations at 49 C.F.R. Part 591 confirm that compliance with the bumper standard is required for import eligibility.¹ Thus, with respect to importation of

¹ As noted above, 49 U.S.C. § 32506(a)(1) contemplates that the Secretaries of Transportation and Treasury will “prescribe joint regulations” concerning the application of the bumper standard to importation eligibility. This was accomplished in an amendment to 49 C.F.R. Part 591 published in the Federal Register on March 28, 1990. In the March 28, 1990 Federal Register notice, NHTSA explained that “the joint regulation that applied to the importation of vehicles subject to the Federal safety standards, 19 CFR 12.80, was never amended to incorporate the bumper standard, although NHTSA enforced it as part of its importation compliance procedures. With the advent of NHTSA’s own vehicle importation regulation, 49 CFR part 591, this notice adds bumper standard importation requirements to the declarations required for entry, and amends the bond provisions to include compliance with the bumper standard. To fulfill the statutory requirement for joint issuance, the final rule [in the March 28, 1990 Federal Register publication] is jointly issued under the authority of both regulatory agencies.” 55 Fed. Reg. 11375, 11376 (Mar. 28, 1990). NHTSA also explained that “NHTSA and Customs have agreed that regulatory simplicity requires that all vehicles subject to NHTSA’s standards should be imported pursuant to NHTSA regulations. Accordingly, a notice was published on November 29, 1989, proposing amendments of part 591 to add the Federal bumper and theft prevention standards to its coverage.” *Id.* (citation omitted).

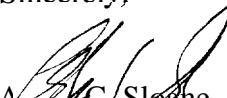
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vehicles (like the nonconforming F355s) that do “not conform with all applicable Federal motor vehicle safety *and bumper* standards” (49 C.F.R. § 591.5(f) (emphasis added)), the registered importer must prove to NHTSA’s satisfaction that the vehicle has, in fact, been brought into conformity with *both* the applicable Federal motor vehicle safety standards *and* the bumper standard. *See* 49 C.F.R. §§ 591.8(d)(1) (importer must agree to “have such vehicle brought into conformity with all applicable standards issued under part 571 *and part 581*”) (emphasis added); 591.8(d)(2) (registered importer must file a certificate stating that the vehicle “complies with each Federal motor vehicle safety and bumper standard”); *see also* 49 C.F.R. § 591.8(d)(3)-(6).

Therefore, the F355 Decision’s statement that “Bumper Standard compliance issues are not directly relevant to an import eligibility decision” (67 Fed. Reg. at 67687) appears to be incorrect and poses the risk of misleading registered importers and the public about whether nonconforming vehicles must be modified to comply with the bumper standard. Accordingly, FNA respectfully requests that the agency publish a Federal Register notice amending the November 6 Decision by removing the first sentence of the paragraph at 67 Fed. Reg. 67687 beginning “The agency notes,” as well as the first three words of the following sentence.²

FNA’s proposed revision of the F355 Decision will enable the agency to clarify the applicable legal principles without changing the substance of the decision.

Sincerely,



A. C. Sloane

cc: NHTSA Dockets
Jacqueline Glassman, Chief Counsel (via facsimile)
Luke Loy (via facsimile)

² To enhance the clarity of the point, the agency might consider adding a sentence – in the text or as a new footnote – stating that compliance with the bumper standard is a required element of import eligibility under 49 U.S.C. § 32506(a) and (c) and 49 C.F.R. Part 591.